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THE MORAL RIGHT TO CONSCIENTIOUS, PERSONAL BELIEF OR PHILOSOPHICAL EXEMPTION TO MANDATORY VACCINATION LAWS

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The National Vaccine Information Center represents a very different constituency from the one we represented when Kathi Williams, Jeff Schwartz and I co-founded our non-profit, educational organization in 1982. Fifteen years ago, our membership consisted only of parents whose children had been injured or died from reactions to the DPT vaccine.

While we continue to represent many families of children and adults who have suffered reactions to DPT, MMR, Hib, hepatitis B and polio vaccines and receive calls every week from parents whose children are suffering vaccine reactions, a great many of our active supporters are health care consumers and health care providers who want to make informed health care choices, including vaccination choices, for themselves and their children.

Many parents, who support our work, are not philosophically opposed to the concept of vaccination and do not object to every vaccine. However, they are philosophically opposed to government health officials having the power to intimidate, threaten, and coerce them into violating their deeply held conscientious beliefs in the event they conclude that either vaccination in general or, more commonly, a particular vaccine is not appropriate for their children.

The National Vaccine Information Center represents citizens from every state, who support the principle of informed consent to medical treatment, which has become a central ethical principle in the practice of modern medicine and is applied to medical interventions which involve the risk of injury or death. Implicit in the concept of informed consent is the right to refuse consent or, in the case of vaccination laws, the right to exercise conscientious, personal belief or philosophical exemption to mandatory use of one or more vaccines.

The National Vaccine Information Center has not advocated the abolishment of vaccination laws as other groups have proposed. However, we have always endorsed the right to informed consent as an overarching ethical principle in the practice of medicine for which vaccination should be no exception.

We maintain this is a responsible and ethically justifiable position to take in light of the fact that vaccination is a medical intervention performed on a healthy person that has the inherent ability to result in the injury or death of that healthy person. In consideration of the fact that there can be no guarantee that the deliberate introduction of killed or live microorganisms into the body of a healthy person will not compromise the health or cause the death of that person either immediately or in the future; and with very few predictors having been identified by medical science to give advance warning that injury or death may occur; and with no guarantee that the vaccine will indeed protect the person from contracting a disease; and in the absence of adequate scientific knowledge of the way vaccines singly or in combination act in the human body at the cellular and molecular level, vaccination is a medical procedure that could reasonably be termed as experimental each time it is performed on a healthy individual.

Further, the FDA, CDC and vaccine makers openly state that often the number of human subjects used in pre-licensing studies are too small to detect rarer adverse events, making post-marketing surveillance of new vaccines a de facto scientific experiment. In this regard, the ethical principle of informed consent to vaccination attains even greater importance.

The reason that informed consent has been increasingly adopted, since World War II, as the guiding ethical principle governing the patient-physician relationship, is as deeply rooted in the comparatively new discipline of political science as it is in more ancient philosophies. At the heart of medicine's struggle to come to grips with a human being's right to informed consent to medical intervention, is a challenge to one tenet of the Hippocratic philosophy of medicine, that is, that the physician and the physician alone should determine which medical intervention will benefit the patient.

This traditional paternalistic medical model is increasingly being rejected by today's more educated health care consumers and, along with this challenge, is also an historic challenge to the supremacy of the allopathic medical model as the only means of maintaining health and preventing disease. The movement toward a more diversified, multi-medical model health care system is a phenomenon occurring not only in the United States but in many technologically advanced countries.

These are contentious and sometimes frightening days, both for consumers and non-allopathic health care providers fighting for the right to have better information and more health care choices, as well as for medical doctors and the institutions they dominate, who understandably do not like the intrusion or disruption of the status quo. While social change is never easy for the challenger or the challenged, in an enlightened society, change can often present a remarkable opportunity for growth and renewal for everyone if perspective is maintained and neither side engages in a take-no-prisoners mentality.

Together with a general rejection of the historically paternalistic character of the patient-physician relationship in favor of one based on truth-telling and a more equal decision-making partnership, the post-World War II concept of the right to informed consent has centered on an acknowledgment of the inviolability of the individual's human right to autonomy and self-determination. This ethical concept, born out of unparalleled tragedy, has emerged as the single most important force in shaping modern bioethics.

In the centuries prior to World War II, religious scriptures as well as some of the greatest philosophers in history have acknowledged that the very meaning of life itself in great part hinges on the ability of the individual to choose his own fate. Aristotle, that masterful defender of empirical knowledge and creator of virtue ethics, insisted that wisdom and moral virtue comes from within each individual, from cultivating the feelings that cause us to act in compassionate, truthful, and noble ways. Aristotle's respect for man's unique ability to reason and choose to be virtuous convinced Thomas Aquinas, who in turn convinced a threatened Catholic Church that religion did not have to be afraid of acknowledging man's ability to discover truth through reason and sense experience, as well as through spiritual revelation.

After the Protestant Reformation led by Martin Luther, when individual responsibility began to be considered more important than obedience to religious doctrine, the 16th and 17th centuries saw dramatic scientific discoveries such as those by Galileo and Isaac Newton that spawned a new breed of philosopher like Thomas Hobbes, who developed a scientific system of ethics emphasizing organized society, the state and political structures.

Toward the end of the 18th century, the great German philosopher Immanuel Kant maintained that the ultimate moral principle, which is known as the categorical imperative, is the golden rule in its logical form, that is, "Act as if the principle on which your action is based were to become by your will a universal law of nature." Kant insisted that no human being should ever treat another human being as a means to an end no matter how good or desirable that end may appear to be.

But Kant was challenged by British philosopher Jeremy Bentham, a contemporary of Jenner, who developed an ethical and political doctrine known as utilitarianism. Utilitarianism, which is a consequentialist theory, judges the rightness or wrongness of an action by its consequences and holds that an action that is moral or ethical results in the greatest happiness for the greatest number of people. With its emphasis on numbers of people, Bentham created utilitarianism primarily as a guide to state legislative policy and, according to Arras and Steinbock, modern cost-benefit analyses "are the direct descendants of classical utilitarianism."

Utilitarianism, which was a philosophical influence on Marxism, was implemented in its most extreme and tragic form by those in control of the German state during World War II. In a remarkable series of articles by physician bioethicists and lawyers published in a November 1996 issue of JAMA, there is a compelling description of how physicians in service to the state employed the utilitarian rationale that a fewer number of individuals can be sacrificed for the happiness of a greater number of individuals. In scientific experiments designed to find ways to cleanse the German state of all infection of it by individuals the state had decided harmed the public good, including physically and mentally handicapped children and adults as well as those suffering from serious diseases, physicians and public health officials played a leading role.

Out of the Doctors Trial in Nuremberg came the Nuremberg Code, of which Yale law professor, physician and ethicist Jay Katz has said "if not explicitly then at least implicitly, commanded that the principle of the advancement of science bow to a higher principle: protection of individual inviolability. The rights of individuals to thoroughgoing self-determination and autonomy must come first. Scientific advances may be impeded, perhaps even become impossible at times, but this is a price worth paying."

In another article, Dr. Katz said that the judges of the Nuremberg tribunal, overwhelmed by what they had learned, "envisioned a world in which free women and men, after careful explanation, could make their own good or bad decisions, but not decisions unknowingly imposed on them by the authority of the state, science, or medicine."

Bioethicist Arthur Caplan concurred when he said, "The Nuremberg Code explicitly rejects the moral argument that the creation of benefits for many justifies the sacrifice of the few. Every experiment, no matter how important or valuable, requires the express voluntary consent of the individual. The right of individuals to control their bodies trumps the interest of others in obtaining knowledge or benefits from them."

The First Principle of the Nuremberg Code is "The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision."

The Nuremberg Code, which speaks most specifically to the use of human beings in medical research but also has been viewed by bioethicists and U.S. courts as the basis for the right to informed consent to medical procedures carrying a risk of injury or death, was followed by the passage in 1964 of the Helsinki Declarations by the World Medical Association. Like the Nuremberg Code, the Helsinki Declarations emphasized the human right to voluntary, informed consent to participation in medical research that may or may not benefit the individual patient, science or humanity.

But even if the Nuremberg Code and Helsinki Declarations had never been promulgated and pointed us toward the morality of accepting the human right to informed consent to medical interventions that can kill or injure us, there is the strong Judeo-Christian ethical tradition that protects the sacred right of the individual to exercise freedom of conscience even if it conflicts with a secular law of the state. This freedom is considered so inviolable in Catholic canon, that the definition of moral conscience is discussed in detail in the catechism of the Catholic Church, which holds that: "Conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right. It is by the judgment of his conscience that man perceives and recognizes the prescription of the divine law." In even stronger terms, the Catholic Church warns that "a human being must always obey the certain judgment of his conscience. If he were deliberately to act against it, he would condemn himself."

In the Old Testament of the Bible, which is the basis for Jewish law and the guide for each believer in Jewish law to discover the will of God, Abraham is asked by God to sacrifice his son to demonstrate his faith. Although Abraham is willing, God does not force Abraham to sacrifice his son. In fact, God makes it clear that human sacrifice to demonstrate allegiance is not appropriate. Why should physicians in a modern state have the power to ask more of a parent than God asked of Abraham?

George Annas and Michael Grodin, both bioethicists, said "Whenever war, politics or ideology treat humans as objects, we all lose our humanity." Or, as Elie Weisel said, "When you take an idea or a concept and turn it into an abstraction, that opens the way to take human beings and turn *them*, also, into abstractions."

In any war, whether it be a war using humans armed with guns in an attempt to defeat other humans, or a war using humans injected with vaccines in an attempt to eliminate microorganisms, it is easy for those in charge to view the instruments of that war - human beings - as objects and a means to an end. But the great moral tradition of Judeo-Christian western thought does not support this dangerous concept.

David Walsh, an ethicist and political scientist, who spoke at the May 1996 Institute of Medicine Risk Communication Workshop, made it clear that the only time the state has the moral authority to override a human being's inviolable right to autonomy and force him to risk his life for the state, is when the very survival of the community is at stake. When, during a workshop break, several participants asked him to define what that means in terms of communicable disease, Dr. Walsh replied "when the number of deaths caused by a disease in a community outweigh the number of births." It is interesting to note that no plague in history, not even the Black Plague and certainly not any vaccine preventable disease we have today, nor the AIDS epidemic, meets that standard.

Philosopher Hans Jonas, in one of the most brilliant and moving essays I have ever read on the subject of bioethics, reminds us that a state may have the right to ask an individual to volunteer to die for what the state has defined as the common good but rarely, if ever, does a state have the moral authority to command it. Like Dr. Walsh, Jonas warned of the extraordinary emergency circumstances that should be in effect before the state can ethically override individual autonomy. He concluded,

"Let us not forget that progress is an optional goal, not an unconditional commitment, and that its tempo in particular, compulsive as it may be, has nothing sacred about it. Let us also remember that a slower progress in the conquest of disease would not threaten society, grievous as it is to those who have to deplore that their particular disease be not yet con-quered, but that society would indeed by threatened by the erosion of those moral values whose loss, possibly caused by too ruthless a pursuit of scientific progress, would make its most dazzling triumphs not worth having."

Even Bertrand Russell, a confirmed agnostic and sometime devotee of the utilitarian ethic, warned that "our conduct, whatever our ethic may be, will only serve social purposes in so far as self-interest and the interests of society are in harmony." He added, "It is the business of wise institutions to create such harmony as far as possible."

I would suggest that it is not in the best interest of the citizens of this free society or of public health officials in positions of authority in the federal or state government to use the heel of the boot of the state to crush all dissent to mandatory vaccination laws and force individuals to violate their deeply held conscientious beliefs. It is not in the best interest of those of you, who deeply believe in the rightness of using vaccines to eliminate microorganisms, to be mistrusted and feared by the people being forced to use the vaccines you create and promote for universal use.

It is very hard for people to trust government officials who track and hunt children down to ensure compliance with mandatory vaccination laws that are now equating chicken pox with smallpox and hepatitis B with polio. It is terrible when Americans live in fear of state officials who show up on parents' doorsteps with subpoenas charging them with child abuse for failing to vaccinate; who threaten parents for refusing to vaccinate their surviving children with the same vaccine that injured or killed another one of their children; who strip, handcuff and imprison a teenager for failing to show proof he got a second MMR shot; who deny children the right to go to school; who deny poor pregnant mothers the right to get food or welfare unless all their children are vaccinated with all government recommended vaccines. How can the people believe or want to do what public health officials say when they live in fear of them?

We as parents, who know and love our children better than anyone else, we, by U.S. law and a larger moral imperative, are the guardians of our children until they are old enough to make life and death decisions for themselves. We are responsible for their welfare and we are the ones who bear the grief and the burden when they are injured or die from any cause. We are their voice and by all that is right in this great country and in the moral universe, we should be allowed to make a rational, informed, voluntary decision about which diseases and which vaccines we are willing to risk their lives for - without fearing retribution from physicians employed by the state.

Argue with us. Educate us. Persuade us. But don't track us down and force us to violate our moral conscience.

On behalf of the growing number of American citizens, who the National Vaccine Information Center represents, we ask the National Vaccine Advisory Committee to support the ethical principle of informed consent, which in this case includes conscientious, personal belief or philosophical exemption to vaccination.

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